IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6700 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARESH V SOMANI

Versus

CHAIRMAN NAGAR PANCHAYAT

Appearance:

MR AJ PATEL for Petitioner

MR JJ SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR MP PRAJAPATI for MR MC BHATT for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/06/2000

ORAL JUDGEMENT

Learned advocate Mr.A.J.Patel is appearing for the petitioner. Learned advocate Mr.M.P.Prajapati is

appearing for Mr.M.C.Bhatt for respondent NO.3. Respondent No. 2 has been served but nobody is appearing on behalf of respondent NO. 2.

In the present petition, the petitioner has challenged the action of respondent No. 1. Brief facts leading to the present petition are that the Hospital Mahavir Surgical is located on the second floor of Sanand City Survey No. 788 and the said building is consisting of three floors including one ground floor. The petitioner and respondent NO. 3 had entered into an agreement on 18th August, 1990. With effect from 18th August, 1990, the petitioner has become tenant of the respondent No. 3. ON the basis of the conditions of contract, the petitioner has to pay Rs.700/- p.m. as rental of the premises to respondent No.3. The petitioner and his partners have been in occupation of the said second floor since 18th August, 1990. The second floor has been lying unoccupied possibly for the last about two years. Therefore, the petitioner proposed to use it for the Hospital. The proposal being accepted, lease agreement was entered into. The said agreement is produced at Annexure "A" to this petition. The hospital was started from 26th August,1990 and since then, the hospital has been going on well as such. On 31.8.1990, the respondent no. 3 received letter which is at annexure "C" to this petition. As per the said letter, it has been averred that the construction has not been done as per the plan approved and it is illegal and against the plan approved and, therefore, respondent No. 3 has been directed to remove the construction within seven days and explanation of the respondent no. 3 was called upon and it was intimated that in case of failure to remove the construction by that time, same will be removed.

It has been submitted by Shri M.P. Prajapati on behalf of the third respondent that the construction under dispute was the second floor occupied by the petitioner and similarly, the petitioner was also informed by respondent no. 3 that the revised plan has been presented to the panchayat and the sanction was awaited. In such a situation, the only irregularity committed is that the one extra floor has been constructed without prior permission of the first respondent. Revised Plan is pending before the first respondent since long and no decision has yet been taken thereon by the first respondent. According to the petitioner, respondent No. 1 cannot demolish the property in question without first considering the revised plan. At the same time, according to the

petitioner, since he is in possession of the property in question as a tenant, he is also required to be heard by the first respondent before taking any action adverse to the petitioner.

This Court, while issuing notice in this petition, has granted ad interim relief in terms of paragraph 17(C) and, thereafter, the petition was admitted by issuing rule on 10th July, 1992 and interim relief granted earlier has continued till today. It is necessary to note that respondent No. 1 and 2 have not filed any reply against the petition. Not only that, but have also not remained present before this Court when the matter was finally heard by this Court. When respondents nos. 1 and 2 have not disputed any averments made in the present petition, then, this Court have no other option but to consider the submissions of the petitioner and respondent NO. 3.

Learned advocate Mr. Patel appearing for the petitioner has submitted that the revised plan is already submitted to the respondent NO. 1 and the decision on the revised plan from the respondent No. 1 is awaited. According to him, during this period, the respondent No. 1 should not take any action against the petition till the revised plan is considered by the first respondent.

In view of these facts and circumstances of the case, respondents Nos. 1 and 2 are directed to take appropriate decision on the revised plan which has been submitted by the respondent No.3 in accordance with law. Before taking any decision on the revised plan submitted by the respondent NO. 3 in respect of the premises in question, the respondent No. 1 and 2 shall give opportunity of hearing to the petitioner as well as respondent No. 3. The respondent NO. 1 and 2 shall take such decision on the revised plan submitted by the respondent No. 3 as expeditiously as possible, within some reasonable period and till such decision is taken, the ad interim relief granted earlier by this court will continue to operate. If Respondent No. 1 and 2 will take any decision adverse to the petitioner while considering the revised plan, then, in such circumstances, it is open for the petitioner to challenge the same in accordance with law.

In view of the aforesaid observations and directions, this petition is disposed of. Rule is made absolute in terms indicated hereinabove with no order as to costs.

30.6.2000 (H.K.Rathod,J.)

Vyas